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December 23, 2002

Mr Brant S Levine
Office of the General Counsel
Federal Election Commission
999 E Street, N W
Washington, D C 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2002 DEC 23 P 5:5

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Re: MUR 5031

Dear Mr Levine.

On behalf of the Rock Island County Democratic Central Committee ("Rock Island"), Walter J Tiller as Treasurer, and John Gianulis as Chairman, we submit the following response to the Federal Election Commission's ("FEC"'s or "Commission"'s) reason to believe dated September 17, 2002 (the "Complaint")

Rock Island is a local party committee It is responsible for the day-to-day activities of the Democratic Party in Rock Island County in Illinois. It has, for many years, conducted coordinated campaign efforts for Democratic candidates in this region – those efforts have consisted primarily of assisting in getting people out to vote on Election Day. The Committee is registered with, and files periodic reports with, the State of Illinois.

A. Political Committee Status

The Complaint alleged that Rock Island is a political committee that made expenditures in excess of $5,000 and, as a result, should have registered under federal

law. In 1998, Rock Island did not understand that it was conducting activities that required registration with the FEC Rock Island was not attempting to conceal information All its activities were public publicly reported in Illinois Indeed, both the original complainant and the FEC relied on Rock Island's publicly filed reports for the allegations they asserted Moreover, the reports that Rock Island filed with Illinois demonstrate that Rock Island was not attempting to make federal expenditures with impermissible funds, the Committee received contributions from individuals during this period and believes that it had sufficient individual contributions in its account Rock Island's report for the period from July 1, 1998 through December 31, 1998 indicates almost $40,000 in individual contributions. While Rock Island no longer has records of its unitemized contributions, it is likely that the vast majority of these contributions were similarly from individuals Accordingly, Rock Island believes that if it had registered and reported its activity with the FEC, it would have been permitted to do precisely what it did. A sufficient portion of its over $40,000 of individual contributions would have complied with federal source and limit restrictions, and Rock Island would have been able to pay for all its expenditures using funds that would have been proper federal funds

Generally, Rock Island conducted GOTV activities through an account of Rock Island that it called the Rock Island GOTV Committee. The Rock Island GOTV Committee was not a separate committee; it was an informal accounting system for the county's GOTV activity. Generally, the Rock Island GOTV Committee conducted generic party activity As detailed in the attached report of the Rock Island GOTV Committee, it conducted mailings relating to absentee ballots, arranged for rides to the polls, and supplied pollwatchers to precinct polling places Most of these activities would have been deemed to be generic party activities, as defined by federal law, because they did not mention any candidates 11 C F R. §§ 106.5(a)(2)(iv) and 100.7(b)(16). The absentee ballot mailings – a copy of which are being produced herewith – were primarily a generic mailing three pages of which included non-candidate specific information concerning applying for absentee ballots. A single page of this mailing contains a list of the entire Democratic slate of candidates on the ballot in Rock Island -- without any discussion of any of these candidates or their positions. This mailing should be viewed as a slate card, which is exempt from the definition of contribution under federal law 11 C F.R § 100 7(b)(9) Thus, the majority of the Rock Island GOTV Committee's activities did not constitute expenditures as that term is defined by federal law

A review of the Rock Island records indicates that in 1998 the Committee did undertake two expenditures that did not qualify as exempt expenditures under federal law Rock Island undertook a radio advertisement and two mailings that mentioned Lane Evans and provided information concerning his legislative record. These activities were but a small subset of the organization's entire budget, and at the time, Rock Island did not understand that these activities could trigger registration and reporting In 1998, Rock Island produced and aired a single radio advertisement that mentioned Lane Evans In addition, it appears that two of the Rock Island GOTV Committee's four mailings in 1998 mentioned the legislative record of Lane Evans, as well as including information regarding the other Democratic candidates on the slate While we cannot reconstruct precisely which expenses were associated with these mailings (as opposed to the other Rock Island GOTV Committee mailings) the amount spent on these mailings was significantly less than the amounts alleged in the Complaint We believe that approximately $7,000 was spent on these mailings. The first of these mailings arrived at people's homes approximately October 19 and the second arrived approximately October 26 A comparison of these dates to the dates of the expenditures from the Rock Island GOTV Committee (expenditure report being produced herewith) illustrates that the expenditures associated with these two mailing were limited to the October 15 mailing expenditure of $3,560.22 and the October 20 mailing expenditure of $3,560 22 Utilizing the allocation formula suggested in the Complaint, 50% federal for the first mailing, 90% federal for the second mailing and 92% federal for the radio advertisement, the total federally allocable portion of these activities would be $4,984 46 for the two mailings and $11,615 for the radio advertisement Accordingly, the approximate amount of expenditures made by Rock Island that could be argued to be allocable to a federal candidate was $16,599.46

Therefore, while it appears that Rock Island undertook some activities that it should have reported to the FEC, the amount of these activities was significantly less than that alleged by the FEC in the Complaint Moreover, Rock Island had sufficient contributions from individual donors to pay for all these expenses. Rock Island did not intend to evade federal election law, it did not attempt to spend (or actually spend) impermissible funds in connection with a federal election. Rather, based on ignorance of the law, Rock Island undertook some activities that may have been covered by the Federal Election Campaign Act ("FECA" or "Act") without registering with the FEC or reporting its activity thereto. However, all such activities and expenditures were at all times publicly disclosed in Illinois

B. Allegations of Affiliation

The Complaint against Rock Island is largely built around a false factual assumption – that Rock Island was a participant in a State Party conducted coordinated campaign The Complaint alleges that the Rock Island is affiliated with the Democratic Party of Illinois (the "State Party") and as a result of this relationship, Rock Island violated the FECA by failing to register as an affiliated committee While Rock Island indicated in its initial response to the FEC that it was affiliated with the State Party, it does not currently believe that it was, as affiliation was defined by the FECA Rock Island's activities together with the State Party consisted entirely of nonfederal activities in connection with state and local candidates Rock Island never worked with the State Party on any federal races and never participated in any State Party coordinated campaign for those races Rock Island may be affiliated with the State Party for nonfederal purposes, but it is not affiliated with the State Party under the standards established by federal law Moreover, Rock Island was not affiliated with the Victory Fund. The relationship between Rock Island and the Victory Fund was not one of common control, but was one of distinct local party entities operating in an overlapping geographic area, Rock Island is but one of thirteen counties in the 17th Congressional District

1. Affiliation under 11 C.F.R. § 110.3(b)(3)

Rock Island is not affiliated with either the State Party or the Victory Fund under 11 C.F R § 110 3(b)(3). First, 11 C F.R § 110.3(b)(3) can not support an allegation of affiliation between Rock Island and the Victory Fund because this regulation solely relates to issues of affiliation between a state party and subordinate committees established by that state party This regulation does not create a presumption of affiliation between two local committees that are not established, financed, maintained, or controlled by a state party. Here, Rock Island, and to our knowledge the Victory Fund, was for federal purposes unaffiliated with and acted independently of the State Party Thus, Section 110 3(b)(3) is not applicable

Second, with respect to the relationship between the Rock Island and the State Party, the presumption created by 11 C F R. § 110 3(b)(3) is rebutted by the facts. As

cited in the complaint, a local party committee is presumed to be affiliated with a state party committee, but that presumption can be rebutted 11 C F R § 110 3(b)(3); Advisory Opinion 1978-9. The presumption is rebutted if the local committee can demonstrate that

> (i) the political committee of the party unit in question has not received funds from any other political committees established, financed, maintained or controlled by any party unit, and
>
> (ii) the political committee of the party unit in question does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained or controlled by another party unit.
>
> 11 C.F R § 110 3(b)

Rock Island meets both of these criteria. It did not receive any federal funds from the State Party (or any unit of the State Party) and it did not coordinate its contributions with the State Party (or any unit of the State Party). While Rock Island did receive a $2,000 nonfederal contribution from the State Party in 1998 and a $5,000 contribution in 2000, both of these contributions were nonfederal contributions. The Commission has never conclusively decided that a nonfederal contribution from a state party to a local party results in affiliation Cf Advisory Opinion 1999-4 .

The Complaint attempts to establish affiliation between the State Party and Rock Island with information that is not relevant to the determination With respect to the State Party, the Complaint states, "their joint participation in the Democratic National Committee's 'Coordinated Campaign' party program" creates affiliation Complaint at 15 (emphasis added) While we do not necessarily agree that this is a

correct statement of the law,[1] as a factual matter Rock Island did not coordinate its activities with the State Party or any national party entities No state or national party entity planned, approved, or directed the Rock Island's activities Finally, the fact that Mr Gianulis was once a chairman of the State Party is not relevant – Mr Gianulis was not the chairman of the State Party during the period in question and the State Party and Rock Island had no overlapping officers or employees during this period Indeed, Rock Island and the State Party had very little to do with each other Rock Island and the State Party conducted a small amount of joint activity regarding a few nonfederal races within Rock Island County Under these circumstances, 11 C F R § 110 3(b)(3) does not support a presumption of affiliation under federal law between Rock Island and either the State Party or the Victory Fund

2. Affiliation Under 11 C.F.R. § 100.5(g)(2)

The Complaint also alleges that the State Party and the Victory Fund were affiliated with Rock Island under 11 C F R § 100 5(g)(2), a regulation adopted by the Commission to be utilized to determine when committees are established, financed, maintained, or controlled by the same corporation, person, or group of persons under 2 U S C § 441a(a)(5) This regulation sets out ten factors for the FEC to consider when determining that the whether committees should be considered affiliated (the "affiliation factors"). None of the affiliation factors is controlling, and the FEC has determined in numerous advisory opinions that there can be a finding of non-

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[1] The regulations state that the presumption of affiliation is rebutted if the local committee can demonstrate that did not coordinate contributions 11 C F R § 110 3(b)(3) (the presumption may be rebutted if the political committee "does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party " (emphasis added)) The regulations do not provide that any coordination of any expenditure results in a finding of affiliation, the relevant examination is of coordination of contributions only Accordingly, a showing of general coordination of generic party activities would not necessarily support a finding of affiliation Moreover, a showing of coordination of generic party activity would not support a finding of affiliation under 11 C F R § 100 5(g)(2), which identifies ten factors that the Commission should consider to determine whether two committees were established, financed, maintained or controlled by the same person or group Coordination of generic party activity is not a factor in 11 C F R § 100 5(g)(2) There are no other facts that would indicate that the Victory Fund and the State Party were established, financed, maintained, or controlled by the same person or group

affiliation even where some of the affiliation factors exist Advisory Opinion Number 2001-7

The facts in this case simply do not support the conclusion that Rock Island was affiliated with either the Victory Fund or the State Party under Section 100.5(g)(2). Quite simply, Rock Island was not established, financed, maintained, or controlled by either the Victory Fund or the State Party With respect to the State Party, the facts of this case do not implicate a single one of the ten affiliation factors Rock Island and the State Party were not created by the same people, were not controlled by the same people, and had no overlapping officers during the period in question. And with respect to the Victory Fund, at most the facts of this case appear to implicate only one of the ten affiliation factors. We have been unable to find a single FEC advisory opinion that found two committees to be affiliated based solely on the presence of one of the ten factors identified in 11 C.F.R § 100 5(g)(2)

Most of the "facts" cited in the Complaint as evidence of affiliation are not evidence at all The Complaint recited several "facts" that relate to other entities and that have no bearing on the activities of Rock Island or its relationship to the Victory Fund. Thus, for example, MUR 4291 is completely irrelevant to Rock Island's activities The fact that the FEC found coordination between other committees in MUR 4291 has nothing whatsoever to do with Rock Island's activities. Rock Island did not operate within ground rules set by the DNC and it did not take direction from the DNC Rock Island did not participate in any coordinated campaign effort with the DNC at any time

The sole fact recited in the Complaint that implicates one of the 11 C.F.R § 100 5(g)(2) affiliation factors is the fact that Rock Island and the Victory Fund shared a single officer John Gianulis served as the unofficial chairman of the Victory Fund and as Chairman of Rock Island However, this fact standing alone cannot establish affiliation. First, such a conclusion would be contrary to the findings of numerous FEC advisory opinions, which conclude that committees were not affiliated despite the presence of several of the affiliation factors. Second, Mr Gianulis was only one of several officers of both Rock Island and Victory Fund and none of the other officers overlapped. Third, Mr Gianulis' position with these committees did

not result in either committee controlling the other Each committee had other officers, consultants and employees who participated in and made the majority of the decisions for the organization

Therefore, the facts of this matter do not support a finding of affiliation under 11 C F.R. § 100 5(g)(2).

C. Coordinated Party Expenditures

During 1998, Rock Island did not understand that any of its activities were subject to the FECA It now appears that some of its 1998 activities should have been treated as coordinated party expenditures under 2 U.S C § 441a(d) However, the amount of such expenditures is significantly less than alleged by the Commission and is within the overall 2 U.S C. § 441a(d) limit available in 1998.

The majority of Rock Island's activities in 1998 consisted of an active GOTV effort for the entire Democratic Party ticket that was not required to be treated as a § 441a(d) expenditure. Thus Rock Island conducted a GOTV effort that included absentee ballot mailings and information, rides to the polls, pollwatchers, generic party mailings and slate cards. Most of these activities were to benefit the entire ticket and should be treated as generic party activities that are exempt from federal law. As described supra, it appears that Rock Island did make some expenditures for a radio advertisement and two mailings that mentioned Lane Evans However, the amount of such expenditures is less than alleged in the Complaint

Even if the FEC determined that Rock Island's expenditures should have been treated as § 441a(d) expenditures, we do not believe there were expenditures in excess of the limit It is our understanding from publicly filed reports that in 1998 the State Party limit was designated to the DCCC, and thus, according to the Complaint, there was a total available § 441a(d) limit of $65,100 in 1998. As reported in the DCCC's reports to the FEC, the DCCC only expended $46,434 in § 441a(d) funds, leaving $18,666 available to be spent by other party committees on coordinated expenditures supporting Lane Evans As detailed supra, the approximate federally allocable amount of the expenditures made by Rock Island in connection with the two mailings and one radio advertisement that could be argued to be on behalf of a federal

candidate was $16,599 46. Thus, the federally allocable portion of expenditures by Rock Island that could argued to be coordinated party expenditures was less than the $18,666 § 441a(d) limit that was available for coordinated party expenditures in connection with the 1998 campaign [2] Moreover, Rock Island had sufficient individual money to have paid for such expenditures with federal funds

The state of the law that existed in 1998 and 2000 was one in which local parties were permitted to conduct activities such as the ones that Rock Island conducted. While BCRA has largely changed that law, the law at the time was one in which "the Congress consciously sought to strengthen the role of parties in the electoral process " Advisory Opinion 1978-9 [3] Throughout the Complaint, the Commission appears to be applying more recent sentiments and developments in the law There have been significant changes to the law since the time of the initial complaint in this matter This case involves a local committee that was attempting to build grassroots operations that would benefit the entire Democratic ticket. If Rock Island's activities had been reported to the FEC, it is likely that they would have been in compliance with the limits therein Rock Island is not affiliated with the State Party or the Victory Fund It raised funds that in significant portion were in compliance with federal limit and source restrictions and made expenditures that were generally in compliance with federal law Its activities were not purposely or deliberately violative

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2 Rock Island could have been designated to make § 441a(d) expenditures, even though it was not a federally registered committee 11 C F R § 110 7(c)

3 The Senate Report on the 1974 Amendments to the Act clearly outlined the contemplated role of parties under the election law reforms

"Thus parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through party organization

"In addition, parties will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues " S Rept No 93-689, 93d Cong 2d Sess , 8 (1974)

of the FECA and the Committee respectfully requests that the Commission take no further action regarding this matter.

Very truly yours,

Cassandra F Lentchner

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